

DEPARTMENT OF STATE REVENUE

SECOND LETTER OF FINDINGS NUMBER: 99-0345P

**Gross Income Tax
Calendar Year 1994, 1995, and 1996**

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. **Tax Administration** – Interest

Authority: IC 6-8.1-10-1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer protests the penalty and interest assessed on an audit completed on March 4, 1999.

Taxpayer files a consolidated tax return. Upon audit it was discovered that the taxpayer made several errors and included two subsidiaries, that had neither nexus nor situs in Indiana, in its consolidated gross and adjusted gross income tax filing.

At hearing, taxpayer states the large underpayment where two entities that did not register with the state, were correctly excluded at audit. However, taxpayer acquired many businesses and intended to register the two but they were plain overlooked which was not willful. In addition, the department assessed interest on the total underpayment thereby assessing more interest than is legally due.

ISSUE

I. Tax Administration – Penalty

DISCUSSION

Taxpayer requests a waiver of penalty and states that the parent company maintained a good relationship with the Indiana Department of Revenue by timely filing tax returns and paying taxes due, and to its knowledge, the parent has not been previously audited. Taxpayer claims the parent and its subsidiaries at all times exercised reasonable care, caution and diligence in attempting to report and remit any tax owed. Further it has hired new CPA's to handle all policy and procedures.

Taxpayer's audit revealed that it made several errors, which resulted in refunds for two years of the audit and an assessment in one year. The assessment was due to two subsidiaries that had neither situs nor nexus in Indiana being deleted from the audit.

In both 1995 and 1996, Audit adjusted to remove business A and business B from the gross income and adjusted gross income tax calculations because neither was registered to do business in Indiana nor had nexus or situs in Indiana. 1995 resulted in an assessment primarily due to these adjustments. 1996 would have incurred approximately the same amount of tax had the auditor not adjusted the Adjusted Gross Income for various items at page 8 of the audit.

The Indiana Code and Regulations clearly outline the organizations that may file consolidated returns. The taxpayer was negligent in failing to make itself aware of the tax laws. The fact that new CPA's were hired to handle current problems has no bearing on the years at audit.

FINDING

Taxpayer's protest is denied.

ISSUE

II. Tax Administration – Interest

DISCUSSION

Taxpayer protests the interest assessed and states that the total underpayment is what the department assessed interest upon.

The audit was completed on March 4, 1999 and forwarded to billing after the audit was reviewed. On April 14, 1999 billings were issued for calendar year 1995, the only year with an assessment with updated interest to that date plus sixty days. Calendar years 1994 and 1996 each resulted in refunds and interest was calculated to April 14, 1999 for the amounts at refund. The amounts of interest calculated to April 14, 1999 are (\$1,819.27) for 1994, \$31,318.09 for 1995 and (\$13,646.26) for

1996. The billing for 1995, however, reflects additional interest for sixty days to allow the taxpayer to make payment or to protest. The department assessed interest on the total underpayment but it also refunded interest (to April 14, 1999) on the overpayments that were applied to the 1995 liability. When the taxpayer submitted payment, it was first applied to penalty, interest, and finally the tax. An assessment is still outstanding that accumulates interest until it is paid or the liability has been cancelled.

The department correctly calculated interest to April 14, 1999 plus sixty days for 1995 and applied tax and interest (to April 14, 1999) for 1994 and 1996 to the outstanding 1995 liability.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied for issues I. and II.